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State Capitol

700 Capital Avenue

Frankfort KY 40601

502/564-8100

Capitol FAX 502/223-5094

Annex FAX 502/564-6543

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
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TO: Gerald E. Wuetcher, Assistant General Counsel  
Public Service Commission

FROM: Susan C. Wunderlich   
Regulations Compiler

RE: Administrative Regulation Amended After Hearing - 807 KAR 5:090

DATE: January 31, 2002

A copy of the amended after hearing administrative regulation, listed above, and the statement of consideration, are enclosed for your files.

This administrative regulation will be reviewed by the Administrative Regulation Review Subcommittee at its March, 2002 meeting. Please notify the proper person(s) of this meeting.

If you have any questions, please contact this office at 564-8100.

Enclosure

FILED WITH LRC  
TIME: 4p  
JAN 31 2002

*Susan C. Wendenbich*  
REGULATIONS COMPILER

1 PUBLIC PROTECTION AND REGULATION CABINET

2 Public Service Commission

3 (Amended After Hearing)

4 807 KAR 5:090. System Development Charges For Water Utilities.

5 RELATES TO: KRS 278.030; KRS 278.040; KRS 278.160; KRS 278.180; KRS  
6 278.190; KRS 278.200; KRS 278.230; KRS 278.310.

7 STATUTORY AUTHORITY: KRS 278.012; KRS 278.015; KRS 278.030; KRS  
8 278.040; KRS 278.160; KRS 278.180; KRS 278.190; KRS 278.200; KRS 278.230; KRS  
9 278.310.

10 NECESSITY, FUNCTION AND CONFORMITY: KRS 278.040(3) provides that  
11 the commission may promulgate reasonable administrative regulations to implement the  
12 provisions of KRS Chapter 278. KRS 278.040(2) grants the commission exclusive  
13 jurisdiction over utility rates and services. KRS 278.200 authorizes the commission to  
14 originate, establish, change or promulgate any rate standard that has been or may be  
15 fixed by any contract or agreement between a utility and any city. KRS 278.030  
16 authorizes a utility to collect fair, just and reasonable rates for its services. KRS  
17 278.230(3) requires a utility to file with the commission any reports or other information  
18 that the commission may reasonably require. KRS 278.310 authorizes the commission  
19 to adopt rules to govern the conduct of its hearings and investigations. This  
20 administrative regulation prescribes filing requirements and procedures to be followed  
21 by a public water utility applying for authority to assess a system development charge or

1 a municipal water utility applying for authority to assess a system development charge  
2 to a public water utility.

3 Section 1. Definitions. For purposes of this regulation:

4 (1) "Municipal water utility" means any city that provides the services  
5 enumerated in KRS 278.010(3)(d) to a public water utility.

6 (2) "Public water utility" means any person including a water district or water  
7 association, except a city, who owns, controls, operates or manages facilities that are  
8 used or to be used to provide the services enumerated in KRS 278.010(3)(d).

9 (3) "System development charge" means a one-time charge assessed by a  
10 water utility on a real estate developer, new customer, or on an existing customer who  
11 significantly increases its demand for water service to finance construction of a system  
12 improvement necessary to serve that customer or a proposed real estate development.

13 (4) "Water utility" means any municipal water utility or public water utility.

14 Section 2. A municipal water utility shall assess a system development charge  
15 upon a public water utility only after obtaining Commission approval. A public water  
16 utility shall assess a system development charge only after obtaining Commission  
17 approval.

18 Section 3. To apply to assess a system development charge, a public water  
19 utility shall file with the commission an application that includes the following:

- 20 (1) All documents and information required by 807 KAR 5:001, Section 8;  
21 (2) A statement of the reason the system development charge is required;  
22 (3) The prepared testimony of each witness the applicant ~~[water utility]~~  
23 proposes to call in a hearing on its application;  
24 (4) A general description of the applicant's ~~[water utility's]~~ property and the

1 field of its operation, together with a statement of the original cost of the property and  
2 cost to the applicant;

3 (5) A general description of how the applicant's [~~water utility's~~] property has  
4 been financed;

5 (6) A capital improvement plan that

6 (a) Covers a minimum of ten (10) years from the date of the filing of the  
7 application;

8 (b) Projects the amount of and characteristics of projected growth and the  
9 demand that growth will place on the system;

10 (c) States the amount of projected growth for each customer class;

11 (d) States the proposed level of service after the completion of planned  
12 improvements;

13 (e) Determines the cost of system upgrades and improvements needed to  
14 provide the desired level of service;

15 (f) States when and where the proposed system upgrades and improvements  
16 would be needed;

17 (g) Contains a deficiency analysis of the applicant's [~~water utility's~~] current  
18 system and identifies the system improvements necessary to provide adequate service  
19 at existing and future demand levels; and

20 (h) If improvements are needed to provide adequate service to existing  
21 customers at existing demand levels, identifies the portion of the system improvement  
22 that will serve existing customers;

23 (7) A statement describing when the proposed system development charge  
24 will be assessed and explaining why the proposed time for assessment is reasonable;

1 (8) A statement that notice has been given in compliance with Sections 6 [4]  
2 and 7 [5] of this regulation;

3 (9) A proposed tariff sheet that complies with 807 KAR 5:011, that proposes  
4 an effective date not less than thirty (30) days from the date the application is filed, and  
5 that sets forth the procedures and rules governing assessment of the proposed system  
6 development charge;

7 (10) A certified copy of the resolution or ordinance of the applicant's [~~water~~  
8 ~~utility's~~] governing body authorizing the assessment of the proposed system  
9 development charge and the filing of an application with the commission; and

10 (11) If the applicant [~~water utility~~] proposes to assess a system development  
11 charge upon another water utility, a copy of the applicant's current water supply  
12 agreement with each affected water utility and a statement explaining why the rates  
13 contained in the contract are inadequate and why an assessment of a system  
14 development charge to that water utility is necessary.

15 Section 4. To apply to assess a system development charge to a public water  
16 utility, a municipal water utility shall file with the commission an application that includes  
17 the following:

18 (1) All documents and information required by Section 3(1) through (10) of  
19 this administrative regulation; and

20 (2) A copy of the municipal water utility's current water supply agreement with  
21 each affected public water utility and a statement explaining why the rates contained in  
22 the contract are inadequate and why an assessment of a system development charge  
23 to that public water utility is necessary.

24 Section 5 [3]. The commission shall consider a proposed system development

charge reasonable if the applicant demonstrates that the proposed charge:

(1) Offsets an increase in cost to fund system expansion to accommodate new growth and demand;

(2) Recovers only the portion of the cost of a system improvement that is reasonably related to new demand; and

(3) Is based upon the cost of a new facility that will increase or expand capacity.

Section 6 [4]. Form of Notice. A water utility filing an application pursuant to this regulation shall notify the public in the manner prescribed herein. The notice shall include:

(1) The amount of the requested system development charge;

(2) A statement that "The rates contained in this notice are the rates proposed by (name of utility); however, the Public Service Commission may order rates to be charged that differ from the proposed rates contained in this notice";

(3) A statement that any corporation, association, or person with a substantial interest in the matter may, by written request, within thirty (30) days after publication or mailing of the notice of the proposed rate changes request intervention;

(4) A statement that any person who has been granted intervention by the commission may obtain a copy of the rate application and any other filing made by the water utility by contacting the water utility at an address and phone number that is stated in the notice; and

(5) A statement that "Any person may examine the rate application and any other filing made by (the water utility) at (the main office of the water utility) or at the commission's office at 211 Sower Boulevard, Frankfort, Kentucky 40601."

1           Section 7 [5].   Manner of Notification.   A water utility shall give the required  
2   notice by publishing the notice once a week for three (3) consecutive weeks in a  
3   prominent manner in a newspaper of general circulation in its service area, the first  
4   publication to be made within seven (7) days of the filing of the application with the  
5   commission. It shall file with the commission no later than forty-five (45) days of the  
6   filed date of the application an affidavit from the publisher verifying that the notice was  
7   published, stating the dates of the publication, and attaching a copy of the published  
8   notice. The water utility shall also post a copy of the required notification at its place of  
9   business no later than the date on which the application is filed, and the notice shall  
10   remain posted until the commission has ruled upon the water utility's application.

11           Section 8 [6]. After reviewing a water utility's application, the commission shall  
12   issue an order approving, modifying or rejecting the proposed capital improvement plan  
13   and system development charge.

14           Section 9 [7]. Unless a water utility proposes to assess a system development  
15   charge upon another water utility, a system development charge shall be based upon a  
16   meter or residential equivalent.

17           Section 10 [8].       Offsets and Credits to Charges.   A water utility shall reduce  
18   or offset a system development charge to an applicant for service if the applicant has  
19   constructed facilities or physical improvements in excess of its own system  
20   requirements that will benefit another part of the water utility's system. A water utility  
21   shall waive a system development charge for any applicant for service electing to  
22   construct a utility facility needed to provide the applicant with water service only if the  
23   amount paid for the construction is greater than the system development charge.

24           Section 11 [9].       Use of System Development Charge Funds.

1           (1) A water utility shall place all collections from an approved system  
2 development charge in a separate interest-bearing account and shall not commingle  
3 collected system development charges and interest income on those charges with other  
4 utility funds.

5           (2) A water utility shall use funds from the separate interest-bearing account  
6 exclusively for

7           (a) the purposes set forth in the capital improvement plan that the commission  
8 has approved;

9           (b) reimbursement or repayment to other accounts from which funds have  
10 been taken to pay for growth-related capital projects that are set forth in the approved  
11 capital improvement plan.

12           (3) If a water utility has failed to provide water service at the requested level  
13 within five (5) years after the collection of the system development charge began, or  
14 when amounts collected from a system development charge have ~~has~~ not been spent  
15 on the approved capital improvement plan within five (5) years of the date the system  
16 development charge began, the water utility shall refund with interest the collected  
17 system development charge. Interest shall be computed in accordance with KRS  
18 278.460.

19           Section 12 ~~[10]~~. Records and Reports. A water utility authorized to assess a  
20 system development charge shall:

21           (1) Maintain a record showing the amount and date of each collection;

22           (2) Maintain a record showing the amount and purpose of all disbursements  
23 from its interest-bearing account;

24           (3) Notify the commission in writing within sixty (60) days of the date it is

1 authorized to assess a system development charge of the location of and provisions  
2 governing its interest-bearing account; and

3 (4) File annually a report that shows for the previous calendar year

4 (a) the amount collected pursuant to its system development charge;

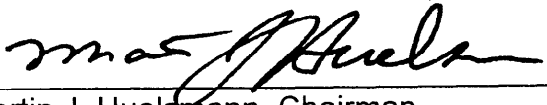
5 (b) the disbursements of funds from its interest-bearing account; and

6 (c) the status of all projects included in its approved capital improvements  
7 plan.

8 (5) A public water utility shall file the report required by Subsection (4) of this  
9 Section with its annual financial and statistical report filed pursuant to 807 KAR 5:006,  
10 Section 3(1). A municipal water utility shall file the report required by Subsection (4) of  
11 this Section no later than March 31 of each year following the approval of its application  
12 to assess a system development charge.

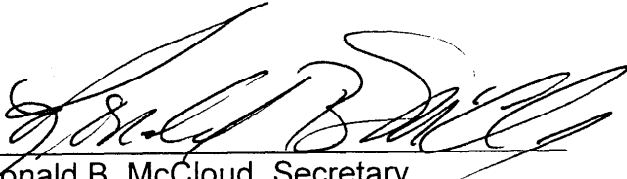
13 Section 13 [~~44~~]. Amendments to Approved Capital Improvement Plans. The  
14 water utility may apply for commission approval of an amendment to its capital  
15 improvement plan to reflect subsequent developments or new information.

16 Section 14 [~~42~~]. Deviations from Administrative Regulation. In special cases,  
17 for good cause shown, the commission may permit deviations from this administrative  
18 regulation.



Martin J. Huelsmann, Chairman  
Public Service Commission

DATE: 1-29-02



Ronald B. McCloud, Secretary  
Public Protection and Regulation Cabinet

DATE: 1-30-02

## REGULATORY IMPACT ANALYSIS

Administrative Regulation #: 807 KAR 5:090

Contact Person: Gerald E. Wuetcher, Assistant General Counsel

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation authorizes the assessment of system development charges by municipal and public water utilities and specifies the requirements for applying to the Public Service Commission for authority to assess these charges. It further establishes rules for administering these charges and reporting on their collection and the use of their proceeds.

(b) The necessity of this administrative regulation: This proposed regulation will assist the Public Service Commission in enforcing the statutes, and is necessary to the Public Service Commission's authority to regulate utilities and enforce KRS Chapter 278. Uncertainty has existed among water utilities over system development charges. The proposed regulation establishes the standards for these charges, clarifies the information that must be presented to establish the reasonableness of these charges, and sets the record keeping and accounting practices for administering them.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 278.030 permits utilities to demand and collect fair, just and reasonable rates for services. This regulation defines the circumstances when a system development charge is reasonable and may be assessed by municipal and public water utilities. KRS 278.160 provides that the Public Service Commission may prescribe rules under which a utility may file its rate schedules. KRS 278.310 specifies that the Commission may adopt rules governing its hearings and investigations. This regulation specifies the requirements for filing a proposed system development charge and the rules governing proceedings to investigate the reasonableness of proposed system development charges. KRS 278.230 provides that the commission may require a utility to file reports that are reasonably needed by the commission. This regulation specifies the reports that a utility must file with the Commission upon approval of a proposed system development charge.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It establishes the conditions under which a utility may assess a system development charge. It provides uniform requirements for applying for authority to assess a system development charge and, therefore, ensures more consistent and timely review of such applications. This regulation provides clear rules on how system development charges should be administered and, therefore, will ensure fair and equitable treatment of all utility customers.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing regulation: The amendment is to the proposed regulation. It makes clear that the Commission's jurisdiction over system development charges assessed by a municipal water utility extends only to those system development charges assessed to a public water utility. It further provides that a public water utility may assess a system development charge not only against a new customer, but also against real estate developers who construct real estate subdivisions that the public water utility will serve.

(b) The necessity of the amendment to this existing regulation: The amendment is to the proposed regulation. Without the amendment, significant confusion will exist concerning the Commission's jurisdiction over a municipal water utility's assessment of system development charges. Without the amendment, significant confusion will also exist concerning whether public water utilities may assess a system development charge against a real estate developer for service to a proposed real estate development or are limited in their assessment of such charges to new customers. Public utilities must plan utility plant expansions before a customer actually applies for water service. Such expansions require commitments years before water service is received and are based upon a developer's plan for construction of new structures. The most effective mechanism for ensuring that these developments pay their appropriate share of the costs of these plant expansions and improvements is the assessment of a system development charge at the time the water utility makes the commitment to serve the proposed real estate development. The most appropriate party upon whom to assess that charge is the developer.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment is to the proposed regulation. KRS 278.010 exempts municipal utilities from Commission regulation. KRS 278.200, however, authorizes the Commission to originate, establish, change or promulgate any rate standard that has been or may be fixed by any contract or agreement between a utility and any city. The amendment ensures Commission review only of charges assessed by a municipal water utility against a public water utility and of no other municipal utility charges. KRS 278.030 permits public water utilities to demand and collect fair, just and reasonable rates for services. The amendment further clarifies to whom such charges may be assessed.

(d) How the amendment will assist in the effective administration of the statutes: The amendment is to the proposed regulation. It will clarify the extent of the Commission's jurisdiction over a municipal water utility's assessment of system development charges. It should reduce needless filing or disputes over the types of municipal water utility rates that must be filed with the Commission. The amendment clarifies the persons against whom a public water utility may assess a system development charge.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: It will affect 121 water districts, 22 water associations, 16 investor owned water utilities, 86 municipal utilities that provide wholesale water service to public utilities, their customers and potential

customers, and real estate developers who are developing real estate developments that will receive water service from a public water utility.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: The impact of implementing this administrative regulation is limited. It will provide water utilities that are experiencing rapid growth a method to finance the construction of new facilities without having to raise existing general rates significantly.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: Implementation of the proposed amendment will not involve additional costs.

(b) On a continuing basis: No additional costs are expected.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No additional funding is required.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding is necessary.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No.

(9) TIERING: Is tiering applied? (Explain why tiering was or was not used.) Tiering is not used in this proposed regulation. The conditions that give rise to the use of system development charges are not unique to any particular type or size of utility. Therefore, tiering was deemed inappropriate.

STATEMENT OF CONSIDERATION  
807 KAR 5:090  
AMENDED AFTER HEARING

(1) A public hearing on the Public Service Commission's Proposed Regulation 807 KAR 5:090 was held on December 21, 2001, at 9:00 a.m., in Hearing Room 1, Public Service Commission, 211 Sower Boulevard, Frankfort, Kentucky.

(2) The following people attended the hearing or submitted written comments on the proposed regulation:

<u>Name</u>	<u>Representing</u>
David Spenard	Attorney General of Kentucky
Len Hale	Hopkinsville Water Environment Authority
Gary Larrimore	Kentucky Rural Water Association
Damon Talley	Kentucky Rural Water Association
Vince Guenther	Louisville Water Company
Robert Miller	Louisville Water Company
Phillip Ward	Oldham County Water District
Gene P. Fouts	Shelbyville Municipal Water & Sewer Commission

(3) Robert E. Spurlin, Commissioner, and Gerald Wuetcher, Assistant General Counsel, represented the Public Service Commission.

SUMMARY OF COMMENTS AND RESPONSES

(1) Application of Regulation to Municipal Utilities.

(a) Comment: Len Hale, Hopkinsville Water Environment Authority, commented in writing that the use of the term "water utility" in Section 2 of the proposed regulation would require Public Service Commission approval of any system development charge that a municipal utility assesses and that such requirement is inconsistent with KRS Chapter 278. Mr. Hale noted that the Public Service Commission's authority does not extend to municipal utilities.

Voicing a similar concern, Damon Tally and Gary Larrimore, Kentucky Rural Water Association ("KRWA") noted that the proposed regulation should apply only to public utilities and to municipal utilities that seek to assess a system development charge upon public utilities. They noted that, while the Public Service Commission has jurisdiction over a municipal utility's sales to a public utility, this jurisdiction does not extend to a municipal utility's retail sales or sales to another municipal utility. They proposed modifications to Section 2 to clarify that a municipal utility requires Public Service Commission approval to assess a system development charge upon a public utility only.

Gene Fouts, Shelbyville Municipal Water and Sewer Commission ("Shelbyville MWSC"), submitted similar written comments. He proposed that the Necessity, Function, and Conformity Section of the proposed regulation be revised to reflect the Public Service Commission's intent to apply only to a municipal utility assessing a system development charge upon a public utility.

(b) Response: The Public Service Commission's jurisdiction over municipal water utilities extends only to those utilities' sales to public water utilities. KRS 278.010(3) exempts municipal water utilities from Commission jurisdiction. In Simpson County Water District v. City of Franklin, Ky., 872 S.W.2d 460 (1994), the Kentucky Supreme Court held that KRS 278.200 granted the Public Service Commission jurisdiction over the rates and service provisions of contracts for utility service between a municipal water utility and a public water utility. In implementing Simpson County Water District, the Commission has consistently held that it lacks jurisdiction over a municipal water utility's retail sales or sales to another municipal utility.

The Commission agrees that, as originally drafted, Section 2 may be interpreted as applying to all system development charges that a municipal utility assesses. It has modified the "Necessary, Function and Conformity" Section to reflect the limited coverage of the regulation. Section 2 has been revised to expressly state the type of municipal utility charge that requires Commission approval. To avoid confusion, the Commission has revised the proposed regulation to list the filing requirements for public utilities and municipal utilities in separate sections.

(2) Assessment of system development charges on developers.

(a) Comment: Damon Tally, KRWA, requested that the proposed regulation clearly provide that system development charges may be assessed upon real estate developers. He noted that the proposed regulation currently defines system development charge as a charge assessed to utility customers. Public utilities, however, must plan utility plant expansions before a customer actually applies for water

service. Such expansions require commitments years before water service is received and are based upon a developer's plan for construction of new structures. The most effective mechanism for ensuring that these developments pay their appropriate share of the costs of these plant expansions and improvements is the assessment of a system development charge at the time the water utility makes the commitment to serve the proposed real estate development. The most appropriate party upon whom to assess that charge is the developer. In many instances, however, the developer is not and will not become a customer of the water utility.

(b) Response: The Commission agrees and has modified the definition of system development charge to include a charge to a real estate developer to finance system improvements necessary to serve a proposed real estate development.

(3) The Proposed Regulation should permit the assessment of a system development charge for commercial or industrial users based upon usage.

(a) Comment: Gene Fouts, Shelbyville MWSC, stated in a written comment that the Proposed Regulation should permit a utility to base its system development charge for commercial or industrial customers upon usage. He notes that for several years Shelbyville MWSC has based its retail system development charge to industrial and commercial customers upon their estimated usage. Each customer's usage is verified after 12 months of actual service. He notes that this method has worked well for Shelbyville MWSC. He states that conversions to a residential equivalent require additional calculations that may lead to errors or create confusion.

(b) Response: The Commission disagrees. System development charges are based upon a prospective customer's potential demand and the cost of the new facilities or improvements necessary to meet such demand. The size of the meter through which water service is provided determines a customer's potential demand. The Public Service Commission disagrees with the contention that use of a meter equivalent may result in calculation errors or create confusion. The American Water Works Association notes that a meter equivalent method is the easiest method to explain to customers and to calculate. American Water Works Association, Principles of Water Rates, Fees and Charges (AWWA Manual M1) (5th Ed. 2000) 205.

(4) Filing requirements are unnecessary.

(a) Comments: Gene Fouts, Shelbyville MWSC, states in writing that many of the filing requirements set forth in Section 2 of the Proposed Regulation (Sections 3 and 4 of the Amended Regulation) are only appropriate if the utility's proposed system development charge is based upon incremental cost method. He recommends that the

filing requirements be limited to proposed system development charges using the incremental cost methodology and that different filing requirements be established for proposed system development charges that are based upon the equity method.

(b) Response: The Commission disagrees. The Proposed Regulation does not recognize any preferred methodology. Because no public utility and very few municipal utilities currently assess a system development charge, however, the Commission expects most proposed system development charges will be based upon the incremental cost method. Many of the filing requirements set forth in Section 2 (Sections 3 and 4 of the Amended Regulation) will apply regardless of the methodology used to develop a proposed system development charge. If an applicant deems any of the filing requirements of Section 2 (Sections 3 and 4 of the Amended Regulation) unnecessary because of the methodology used to develop its charge, it may request a deviation from those requirements pursuant to Section 12 of the Proposed Regulation (Section 14 of the Amended Regulation).

(5) The Proposed Regulation should require applicant to provide a basis for classifying customers for separate treatment.

(a) Comment: David Spenard, Attorney General's Office ("AG's Office"), commented that the regulation should require a demonstration of a suitable and reasonable basis for classifying customers for separate treatment. Without such a demonstration, he asserts, a system development charge is likely to result in new customers subsidizing existing customers.

(b) Response: The Commission disagrees. Section 3 of the Proposed Regulation (Section 5 of the Amended Regulation) expressly identifies the requirements that must be demonstrated to obtain Commission approval. An applicant must currently demonstrate that the costs to be recovered through the system development charge are related to facilities that expand or increase system capacity to accommodate new growth and demand. The Proposed Regulation permits only the recovery of costs related to new growth through a system development charge. The filing requirements set forth in Section 2 of the Proposed Regulation (Sections 3 and 4 of the Amended Regulation) require the production of information that will enable the Commission to separate facilities improvements that will serve all customers of the system and those necessitated by new growth. Costs that are more appropriately recovered through general rate adjustments, for example, operation and maintenance expenses, debt service expenses on facilities that serve both new and old customers, are weeded out and eliminated during the review process. Moreover, this information will indicate the timeline for the proposed construction of new system facilities and the expected increase in system demand. The Proposed Regulation also requires the applicant to

indicate when the proposed system development charge will be assessed and why the proposed time is reasonable. Accordingly, the Proposed Regulation contains adequate protections against the subsidization of old customer rates by new customers.

(6) The Proposed Regulation should require applicant to demonstrate that the proposed charge is not a substitute for a general increase in rates.

(a) Comment: David Spenard, AG's Office, commented that the proposed regulation should require a demonstration that the proposed charge is not simply a substitute for a general increase in rates to ensure that a utility is not merely imposing a one-time charge on new customers to avoid a general rate increase to all customers.

(b) Response: The Commission disagrees. The requirement that applicant demonstrate that the system development charge is not a substitute for a general rate adjustment is impractical. Most commentators have long recognized that a system development charge is a substitute for general rate adjustments. See e.g., American Water Works Association, Principles of Water Rates, Fees and Charges (AWWA Manual M1) (5th Ed. 2000) 205. Rather than have all ratepayers pay for system improvements for new growth through a general rate adjustment, system development charges permit the cost of new development to be assessed directly to the new customer who is the cost causer. The need for general rate adjustments is thus reduced. Under the Proposed Regulation, the principal issue is not whether a general rate adjustment is avoided, but whether the costs to be recovered through the proposed system development charge are related to new customer growth and the construction or expansion of system capacity to serve that growth.

(7) The Proposed Regulation should require a review of the impact of the proposed charge on the applicant's cost of service and rate design.

(a) Comment: David Spenard, AG's Office, commented that the proposed regulation should require a review of the impact of the proposed system development charge or capital improvement plan on the applicant's cost of service or rate design. He expressed the concern that without such review new customers pay twice for the same system improvements and expenses.

(b) Response: The Commission disagrees. The Proposed Regulation adequately addresses the effect of a proposed system development charge on existing general rates. The Proposed Regulation does not allow the recovery of costs that are presently included in general rates. The information that Section 2 of the Proposed Regulation (Sections 3 and 4 of the Amended Regulation) requires will enable the Commission to determine the costs that are presently in general rates and exclude their

recovery through the proposed system development charge. To the extent that a system development charge would render existing general rates unreasonable, KRS 278.250 and KRS 278.260 already provide a mechanism for review and adjustment of those rates. Moreover, KRS 278.030 and KRS 278.040 require the Commission to adjust general rates if the imposition of a system development charge would render those rates unreasonable.

(8) Technical drafting changes.

(a) Comment: Damon Tally and Gary Larimore, KRWA, proposed several minor drafting changes to replace the term "utility" with the term "water utility" to achieve consistency throughout the Proposed Regulation.

(b) Response: The Commission agrees and has amended the Proposed Regulation to make these technical revisions. The Commission has also discovered a drafting error in Section 3 (Section 5 of the Amended Regulation) and has inserted the word "and". In Section 5 (Section 8 of the Amended Regulation), the word "have" has been substituted for the word "has".

SUMMARY OF STATEMENT OF CONSIDERATION  
AND  
ACTION TAKEN BY THE PUBLIC SERVICE COMMISSION

The Commission has carefully reviewed the comments offered and concludes that its proposed regulation is generally consistent with KRS Chapter 278. It will, however, amend the proposed regulation, as stated above, to address the concerns raised and clarify the regulation, its scope and impact.

In response to the comments offered, the Commission will amend the regulation to clarify the applicability of the regulation to municipal utilities, to permit the assessment of a system development charge against a real estate developer; and to correct minor drafting errors. As a result of the changes to clarify the regulation's applicability to municipal utilities, the Commission will add two sections to the regulation and renumber all sections that previously followed Section 2.

The changes to the proposed regulation are:

1. Page 1 line 6, Relates To, after "278.190;" insert KRS.
2. Page 1 line 21, Necessity, Function and Conformity, after the words "by a" insert the word public.
3. Page 1 line 21, Necessity, Function and Conformity, after the word "charge" insert or a municipal water utility applying for authority to assess a system development charge to a public water utility.
4. Page 2 line 10, Section 1(3), after the word "utility" insert on a real estate developer,.
5. Page 2 line 12, Section 1(3), after the word "customer" insert or a proposed real estate development.
6. Page 2 line 14, Section 2, after "2." insert the following:  
  
A municipal water utility shall assess a system development charge upon a public water utility only after obtaining Commission approval. A public water utility shall assess a system development charge only after obtaining Commission approval.

7. Page 2 line 18, Section 3, insert the words Section 3. at the beginning of the line.

8. Page 2 line 18, Section 3, after the words "system development charge, a" insert the word public.

9. Page 2 line 22, Section 3(3), after the words "witness the" insert applicant and delete the words [~~water utility~~].

10. Page 2 line 24, Section 3(4), after the words "description of the" insert applicant's and delete the words [~~water utility's~~].

11. Page 3 line 3, Section 3(5), after the words "how the" insert applicant's and delete the words [~~water utility's~~].

12. Page 3 line 17, Section 3(6)(g), after the words "of the" insert applicant's and delete the words [~~water utility's~~].

13. Page 4 line 1, Section 3(8), insert the number 6 and delete the number [4].

14. Page 4 line 2, Section 3(8), insert the number 7 and delete the number [5].

15. Page 4 line 7, Section 3(10), after the words "of the" insert applicant's and delete the words [~~water utility's~~].

16. Page 4 line 10, Section 3(11), after the word "the" insert applicant and delete the words [~~water utility~~].

17. Page 4 lines 15 – 23, Section 4, add the following lines:

Section 4. To apply to assess a system development charge to a public water utility, a municipal water utility shall file with the commission an application that includes the following:

(1) All documents and information required by Section 3(1) through (10) of this administrative regulation; and

(2) A copy of the municipal water utility's current water supply agreement with each affected public water utility and a statement explaining why the rates contained in the contract are inadequate and why an assessment of a system development charge to that public water utility is necessary.

18. Page 4 line 24, Section 5, insert the number 5 and delete the number [3].

19. Page 5 line 5, Section 5(2), after the words "to new demand;" insert the word and.
20. Page 5 line 8, Section 6, insert the number 6 and delete the number [4].
21. Page 6 line 1, Section 7, insert the number 7 and delete the number [5].
22. Page 6 line 11, Section 8, insert the number 8 and delete the number [6].
23. Page 6 line 11, Section 8, after the words "reviewing a" insert the word water.
24. Page 6 line 14, Section 9, insert the number 9 and delete the number [7].
25. Page 6 line 17, Section 10, insert the number 10 and delete the number [8].
26. Page 6 line 24, Section 11, insert the number 11 and delete the number [9].
27. Page 7 line 14, Section 11(3), after the word "charge" insert the word have and delete the word [~~has~~].
28. Page 7 line 18, Section 11, after "278.460" insert "·".
29. Page 7 line 19, Section 12, insert the number 12 and delete the number [10].
30. Page 8 line 5, Section 12(4)(b), after the word "interest" insert "·".
31. Page 8 line 13, Section 13, insert the number 13 and delete the number [11].
32. Page 8 line 14, Section 13, before the word "utility" insert the word water.
33. Page 8 line 16, Section 14, insert the number 14 and delete the number [12].